IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1003 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE A.L.DAVE

HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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FULSINGBHAI RUMALBHAI - Appellant
Versus
STATE OF GUJARAT - Opponent

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Appearance :
THROUGH JAIL, MS RV ACHARYA for Appellant,
MR.PRACHCHAK, ADDL.PUBLIC PROSECUTOR for Respondent-State

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CORAM : HONOURABLE MR.JUSTICE A.L.DAVE

and

HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

Date : 24/07/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE A.L.DAVE)

Present appeal arises out of the judgment and order rendered by the learned Additional Sessions Judge, Panchmahals at Dahod on 15/10/1998 in Sessions Case No.135 of 1997, convicting the appellant for the offence of murder of Dalshukhbhai Rumalbhai Chandana on 21/6/1997 at about 21:00 hours in the outskirts of village Chandana-na-Muvada. The appellant was tried, convicted and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.5,000/- in default, to undergo simple imprisonment for three months by learned Sessions Judge and hence, this appeal.

2. The prosecution case is as under.

2.1 The appellant and the deceased-Dalsukh were real brothers. They shared commonly owned agriculture land, but they were staying separately. Son of deceased, Ramesh had allegedly

lent Rs.600/- to the appellant. On the day of incident, as per the prosecution case, the deceased went to the house of the appellant at about 2:00 p.m. and at that time, he was asked to collect Rs.600/- from the appellant which was borrowed by the appellant from Ramesh. The deceased did not come back till evening. Around 9 O'clock son of the deceased, Chiman was asked to bring kerosene for the domestic purpose. When Chiman was going to bring kerosene from Chatur Parsing, he heard a hubbub from a field and noticed the deceased being assaulted by the appellant. The deceased also raised shouts, so also, Chiman. Hearing the shouts, Bhavsing Chatur, who was in his house located nearby, rushed to the place and rescued the deceased by separating the two. He then asked the appellant to go away and asked Chiman to take his father home. Chiman therefore supported deceased-Dalsukh in going home and took him home. On reaching home, Jaliben, wife of deceased-Dalsukh was asked to give water to the deceased, but before that

could be done the deceased had passed away.

2.2 Chiman Dalsukh and other family members waited for Ramesh to come but, as he did not come, they; after waiting for a long time; Chiman Dalsukh lodged F.I.R. with Zalod Police Station. Offence was registered and investigated and ultimately, charge-sheet was filed in the Court of J.M.F.C., Zalod. Learned J.M.F.C., Zalod in turn committed the case to the Court of Sessions and Sessions Case No.135 of 1997 came to be registered.

2.3 Learned Sessions Judge framed charge at Exh.2, to which the appellant pleaded not guilty and claimed to be tried. After the trial, considering the evidence led before it, the trial court convicted the appellant-accused as stated above.

3. We have heard learned Advocate for the appellant and learned A.P.P., Mr.Prachchak.

4. We have the record and proceedings before us and have examined the same.

5. Learned Advocate for the appellant submitted that there is no evidence to prove the motive. The prosecution has examined no witness to establish that the appellant had borrowed Rs.600/- from Ramesh and that on demand being made by the deceased, he was assaulted upon by the appellant. It was submitted by learned Advocate for the appellant that as per the prosecution case, there are two eye-witnesses viz. Chimanlal Dalsukhbhai and Bhavsing Chatur. The incident has occurred at about 9:00 p.m. in the outskirts of village Chandana-na-Muvada. In the field, there were no lights and, therefore, the witnesses could not have identified the assailants. It was submitted by learned Advocate for the appellant that conduct of Chiman Dalsukh is unnatural to the extent that he does not rescue his father nor does he intervene in any manner. Likewise, the conduct of Bhavsing Chatur

is also not natural. He is a police personnel and still after the incident, he takes no steps to inform Police to get the offence registered, he leaves the place immediately after the incident though the deceased was badly injured and does not extend any help to him. This witness takes no steps to arrest the assailant.

5.1.1 It was therefore submitted that neither of the two witnesses are reliable, on depositions of whom conviction has been recorded.

5.2 It was also submitted that the incident has occurred in darkness, even Bhavsing Chatur also does not notice injuries but knows about the same by palpating.

5.3 It was also contended that the F.I.R. is lodged late by 22 hours for no justifiable reasons, motive part is fabricated and, therefore, witnesses also should not be believed. It was also submitted that genesis of the

incident and real facts as to incident have not come on record satisfactorily and therefore the benefit of doubt may be given to the appellant.

6. Learned A.P.P., Mr.Prachchak, has opposed this appeal. He submitted that undisputedly the incident has occurred in a field at about 9:00 p.m. where there were no lights but the incident is witnessed by first informant who is a close relative of the deceased and the appellant viz. son and nephew respectively. Witness, Bhavsing Chaturbhai is also closely associated with both the deceased and appellant and would be able to identify the persons easily. Not only that, this witness has rescued the deceased and has separated the two and therefore, he was at very close quarter and there is no chance of any mistaken identity. Learned A.P.P. has further submitted that Bhavsing has no axe to grind against the appellant, he has no reason to falsely implicate the appellant, he is an independent witness, who corroborates the say of

the first informant. The first informant has also no reason to falsely implicate the appellant and let go the real culprit. The suggestion regarding dispute as to lend has been turned down by the witnesses and as such there was no dispute in the family and first informant therefore has no reason to falsely implicate the appellant.

6.1 It was also submitted by learned A.P.P. that the medical evidence indicates that the injuries caused to the deceased were of serious nature and were on vital part of the body. There were multiple injuries and they have been certified to be sufficient in ordinary course of nature to cause death by the doctor.

6.2 Learned A.P.P. therefore submitted that the trial Court has considered all these aspects while recording conviction and this Court may not interfere with the same and may dismiss the appeal.

7. We have examined the record and proceedings from the angles suggested by both the sides.

8. Story emerging from the depositions of Chiman Dalsukh (Exh.5) and Bhavsing Chatur (Exh.15) are consistent with each other, except a minor inconsistency as to the exact words used while raising shouts i.e. whether the help was sought in name of Bhavsing or without giving any name. Barring that aspect the evidence is consistent. Chiman was going to fetch kerosene from Chatur Parsing. When he heard the hubbub and rushed to the spot which was in midst of a field and not on the way. He noticed that appellant was assailing the deceased. He raised shouts, but the appellant paid no heed. The deceased had also raised shouts. Around that time Bhavsing Chaturbhai was at his residence which is located in the vicinity. On hearing the shouts, he rushed to the spot, noticed the appellant in a mounted position over the deceased who had fallen

to the ground and he intervened, separated the two, asked Fulsing-appellant to leave and asked the first informant-Chiman to take away his father. Chiman took deceased-Dalsukh to their home by extending support and asked his mother to bring water for his father but, before that could be done deceased succumbed to the injuries.

9. It was contended that the conduct of these two witnesses is not natural. So far as Chiman is concerned, he does not intervene or rescue his father. And Bhavsing does not extend any help to Chiman in taking his father home nor does he report to the Police about the incident nor does he arrest the appellant.

9.1 It is not possible to discard depositions of these witnesses only on ground of their conduct when the two witnesses have corroborated each other and when their version comes in a natural way. Chiman is aged about 19 years when his deposition was recorded. In the F.I.R. he is

shown to be aged about 18 years therefore, while the incident was occurred his age was about 18 years. A young boy of 18 on noticing such an incident may not be able to summon courage to interfere although, he has raised shouts. Similarly, Bhavsing also may not have realized the seriousness of the incident and therefore, simply because these two witnesses have reacted in a particular manner, it cannot be said that their depositions would be rendered vulnerable. Judicial notices of the fact can be taken that different persons react in a different manner depending upon their individual personality and character and therefore, it is not possible to accept the contention that because conduct of these witnesses is not natural, they may not be believed.

9.2 It was also contended that the incident has occurred in darkness, there were no lights, the place of incident is isolated place and therefore the witnesses could not have

identified. This submission is also not possible to be accepted for the reason that Chiman is the real nephew of the appellant and son of the deceased. Unlike urbanites persons staying in rural area are used to darkness. Apart from identifying a person from face, there are other methods of identifying a person like their physical structure, gait, voice, etc. Further witness-Bhavsing has actually intervened and had opportunity of seeing both the deceased and the appellant at a very close quarters and therefore there is no possibility of a mistaken identity by either Chiman or Bhavsing.

9.3 In our opinion, therefore, the depositions of Prosecution Witness No.1, Chiman Dalsukh and Prosecution Witness No.5, Bhavsing Chaturbhai cannot be doubted. They corroborate each other and they come in a natural way.

10. The question regarding motive was also asked. It is true that Ramesh, who is alleged to

have lent money to the appellant has not been examined. It is equally true that witness, Chiman Dalsukh has admitted in cross-examination that he had no personal knowledge about the transaction between Ramesh and the appellant. But, Jaliben Dalsukh (Exh.11) says that when deceased went to the house of the appellant, he was asked to collect Rs.600/- from the appellant which the appellant had borrowed from Ramesh. It cannot be overlooked that the transaction was between the two closely related persons viz. uncle and nephew hailing from a remote village. The persons do not belong to a highly educated or economically advanced class and strict proof of such evidence cannot be accepted. Apart from this, when the incident is proved through direct evidence, the motive does not remain so significant.

11. Another aspect that was contended was that the F.I.R. is lodged late by about 22 hours without any justifiable reason. In this regard,

it may be noted that the delay is sought to be explained in the F.I.R. itself where Chiman has said that they waited for Ramesh to come and as he did not come, after waiting for long hours, they ultimately lodged the F.I.R. The social background of the family is significant. Ramesh is the elder brother of Chiman and probably the eldest male member in the family of deceased-Dalsukh. It is not unnatural that the family would wait for him to come before taking any action particularly when the action was to be taken against another family member viz. uncle-the appellant and ultimately because Ramesh does not turn up, they lodged the F.I.R. The delay of 22 hours is quite long but has been explained and is not inordinate enough to render the prosecution case doubtful.

12. It is indicated by learned A.P.P. that the appellant is absconding since 26/5/2006 in respect of which appropriate steps have been taken by the State Machinery.

13. On examining these pieces of evidence, we are of the view that the trial Court cannot be said to have committed any error in recording conviction. We have gone through the judgment and we are in agreement with the reasoning adopted and conclusion arrived at by the trial Court. We do not find any merit in the appeal. Appeal therefore, must fail and stands dismissed. The judgment and order impugned in the appeal is confirmed.

(A.L.DAVE, J.)

(BANKIM N.MEHTA, J.)

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